**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2011 OF 2005**

The Baroda Rayon Corporation Ltd.,
Bombay. ...Petitioner

**Versus**

Maharaja Fatehsinh Charities & Ors. ...Respondents.

Shri V.P.Sawant, for the Petitioner.
Miss Preeti Shah, for Respondent Nos.1,3 & 4.

**CORAM : ANOOP V. MOHTA, J.**

**DATE : 19TH DECEMBER, 2005**

**P.C. :**

1. Heard. By this Writ Petition, a order dated 10th February, 2005 passed by the Small Cause Court at Mumbai on an application being Interim Notice No.499 of 2004 in T.E. & R Suit No.150/189 of 2000, whereby the application for stay of proceedings was rejected.

2. The learned Counsel for the petitioner specifically contended that even though this was an application for stay of proceedings, it was not exactly under the provisions of Section 10 of the Civil Procedure Code. The learned Judge, therefore, wrongly treated that application as application under Section 10 of the Code of Civil Procedure. Even assumed for a moment as contended by the learned Counsel for the petitioner that the application was not exactly under Section 10 of the Code of Civil Procedure, but, in the facts and circumstances of the case, the Court might

exercise its inherent power under Section 151 of the Code of Civil Procedure and stay such proceedings to avoid complications in the matter including their rights which would be decided in the proceedings pending before the Charity Commissioner basically in reference to the property involved in the present Suit.

3. The present Suit for eviction filed by the original plaintiffs is now at the stage of trial.

4. Section 10 has its own ingredients which are; the pending proceedings before the competent Court, common issues and involvement of the same parties. In absence of these ingredients, such application for stay of proceedings, cannot be accepted and rightly rejected by the learned Judge. The issues as such which are framed in the present proceeding take care of the contentions as raised by the learned Counsel appearing for the petitioners; basically of the respective ownership rights in respect of the suit premises and including of the Trust and of the original plaintiffs.

5. There is no dispute at present that the basic suit has been filed for eviction against the defendant by invoking the provisions of the Maharashtra Rent Control Act. In such proceeding of eviction, whatever the defence available to the defendant would be taken note of. In the peculiar facts of this particular

case, even though, there are some disputes about the ownership and as the issues are already framed, the Court is bound to consider the rival contentions based on the existing issues. There is no doubt that the Court, if an application is made or even otherwise, has power to reframe or recast the issues, if it is necessary or essential to decide the main Suit.

6. It need to mention that there is no doubt that the issue of jurisdiction has already been framed by the Court. That issue of jurisdiction and issue of ownership framed by order dated 27-03-2003 will take care of the rival contentions of the parties even based on the proceedings which are pending before the Charity Commissioner.

7. In view of this, the learned Judge after considering the matter which are pending before the Charity Commissioner, is right in rejecting this application. In view of this, I am not inclined to interfere with the order passed by the learned Judge.

8. The Writ Petition is, therefore, dismissed by keeping all points open to both the parties.

**(ANOOP V. MOHTA, J.)**